HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No.3699 OF 2006

Between:

P.N.Jaganmohan Rao & another.

..... Petitioner

AND

Kolli Hanumayamma & another.

.....Respondents

:: O R D E R ::

Counsel for the Petitioners : Sri P.N.Jaganmohan Rao, Party-in-Person.

Counsel for Respondent No.1 : None.

18th October, 2006

Per G.S.SINGHVI, C.J.

In this petition, the petitioners have prayed for quashing orders dated 17-12-2004 and 8-7-2005 passed by Andhra Pradesh Consumer Disputes Redressal Commission (for short, 'the State Commission') in F.A.I.A.No.2488 of 2004 in F.A.No.1408 of 2004.

Respondent No.1 - Smt. Kolli Hanumayamma filed a complaint

under Section 12 of the Consumer Protection Act, 1986 (for short, 'the Act') with the following prayer:

> "1) To pay the complainant an amount of Rs.85,000/- by way of refund of lawyers fees paid to the respondents, to refund Rs.10,000/- paid towards the travelling expenditure of the respondents, to refund Rs.7,000/- paid towards the expenses for obtaining certified copies from High Court totaling to Rs.1,02,000/- with 18% interest.
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> 2) To reimburse to the complainant an amount of Rs.1,83,000/- with interest of 18% and Rs.3,000/- p.m. from the month of May, 2003 towards loss sustained due to non-filing of Appeal in High Court against the order in I.A.No.132 of 1998 in HMOP No.38 of 1998 of ASCJ, Gudur till the restoration of review petition filed and decided or till the disposal of HMOP No.38 of 1998 on the file of SCJ Court, Gudur.
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> 3) To pay the complainant an amount of Rs.10,000/- to engage a High Court lawyer to restore the Appeal against the order in I.A.no.132 of 1998 in HMOP.No.38 of 1998 of ASCJ Court, Gudur to revise the maintenance amount. An amount of Rs.10,000/- to engage a lawyer to represent C.C.No.66 of 2000 and C.C.No.185 of 2001 on the file of JMFC, Gudur. An amount of Rs.2,000/- to engage a lawyer to represent in M.C. No.12 of 1999 on the file of JFMC Court, Sullurupeta totalling to Rs.22,000/- with interest of 18%.
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> 4) To pay the complainant an amount of Rs.5,00,000/- towards compensation towards physical strain, mental agony and damages she suffered, payable with interest of 18%.
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> 5) To direct the respondents to return the case records in W.P.No.2695 of 1999, S.R.No.8045 of 1999, Tr.CMP.No.388 of 2000, Tr.CMP.No.426 of 2000 on the file of High Court, M.C.No.12 of 1999 on the file of JMFC Court, Sullurpeta and C.C.No.66 of 2000 and C.C.No.185 of 2001 on the file of JMFC Court, Gudur.
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> 6) To pay the complainant Rs.10,000/- towards the costs of this petition."

In her complaint, respondent No.1 alleged that she had engaged the respondents (petitioners herein) for prosecuting her cause in the Court, but they failed to perform their duty and provide service, which resulted in serious loss to her.

The complaint filed by respondent No.1 was registered as

C.D.No.120 of 2003. By an order dated 5-10-2004, District Consumer Forum, Nellore (for short, 'the District Forum') allowed the complaint and directed the present petitioners to pay a sum of Rs.1,50,000/- with costs of Rs.5,000/-.

The petitioners challenged the order of the District Forum by filing an appeal under Section 15 of the Consumer Protection Act, 1986 (for short, 'the Act'). They also applied for stay of the order passed by the District Forum. By an order dated 17-12-2004, the State Commission granted interim relief to the petitioners, but gave liberty to respondent No.1 - Kolli Hanumayamma to withdraw Rs.25,000/- without furnishing security. After seven months, the State Commission passed order dated 8-7-2005, whereby the petitioners were directed to deposit an additional sum of Rs.50,000/- and liberty was given to respondent No.1 to withdraw the same without furnishing security.

In the writ petition, the petitioners have questioned the impugned orders mainly on the ground that the State Commission does not have the power, jurisdiction or authority to direct them to deposit Rs.50,000/- in addition to the amount required to be deposited in terms of second proviso to Section 15 of the Act. They have also questioned the liberty given by the State Commission to respondent No.1 to withdraw the amounts of Rs.25,000/- and Rs.50,000/- without furnishing security.

Although respondent No.1 has not appeared in person or through an advocate, she has sent counter by post. In paragraph 5 of her affidavit, respondent No.1 has challenged the maintainability of the writ petition by contending that the petitioner can avail the alternative remedy by filing appropriate application before the National Commission. She has further averred that the petitioners have been harassing her by instituting frivolous litigation.

Shri P.N. Jagan Mohan Rao (petitioner No.1), who appeared in person, argued that the orders impugned in the writ petition are liable to be quashed because the State Commission exceeded its jurisdiction when it directed the petitioners to deposit an additional

amount of Rs.50,000/- and gave liberty to respondent No.1 to withdraw the same without furnishing security. He relied on Section 15 of the Act, which postulates entertaining of appeal subject to the deposit of one-fourth of the decretal amount or Rs.25,000/-, whichever is less and argued that once this condition is fulfilled, the State Commission is under obligation to stay the execution of the order passed by the District Forum. He further argued that the State Commission committed a serious illegality by granting liberty to the respondent to withdraw the amounts of Rs.25,000/- and Rs.50,000/- respectively without requiring her to provide security for refund of the amount.

We have considered the arguments/submissions of petitioner No.1.

Second proviso to Section 15 of the Act imposes a bar to the entertaining of appeal filed against an order of the District Forum unless he deposits 50% of the decreed amount or Rs.25,000/- whichever is less. This proviso has nothing to do with the inherent power of the State Commission to grant interim relief to the appellant subject to certain conditions. Therefore, we do not find any valid ground to nullify order dated 8-7-2005 passed by the State Commission in terms of which the petitioners were required to deposit a sum of Rs.50,000/- for continuing the interim order passed earlier.

However, we find merit in the petitioners' grievance that the direction given by the State Commission entitling respondent No.1 to withdraw the sum of Rs.50,000/- without furnishing security would cause serious prejudice to them. In our view, during the pendency of the appeal, the State Commission ought not to have given liberty to respondent No.1 to withdraw the entire amount deposited by the petitioners as per the requirement of second proviso to Section 15 of the Act and in terms of interim order dated 8-7-2005 without furnishing security. The State Commission was duty-bound to ensure that the amount deposited by the petitioners is not utilized by respondent No.1

unconditionally.

For the abovementioned reason, the writ petition is partly allowed and liberty given by the State Commission to respondent No.1 to withdraw Rs.50,000/- without furnishing security is set aside. However, it is made clear that there shall be no stay on the withdrawal of Rs.25,000/- by respondent No.1 in terms of order dated 17-12-2004 passed by the State Commission.

While disposing of the writ petition in the manner indicated above, we deem it proper to request the State Commission to dispose of the appeal preferred by the petitioners as early as possible, preferably within a period of three months from the date of receipt of copy of this order.

G.S.SINGHVI, C.J.

18th October, 2006

C.V. NAGARJUNA REDDY, J.

Note: Registrar (Judicial) is directed send a copy of this order to the State Commission.

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